

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Case No.: 3:19-cr-00027-LRH-WGC-2

UNITED STATES OF AMERICA,

Plaintiff

v.

MYRON MOTLEY,

Defendant

**Order**

Re: ECF No. 59

Before the court is defendant Myron Motley's emergency motion to reopen detention hearing due to the COVID-19 Pandemic, referred to the undersigned by District Judge Larry R. Hicks. (ECF Nos 59, 59-1 to 59-3.) On June 24, 2019, the court ordered Motley detained pending trial, and he has been in custody since. (ECF No. 29.) Motley now requests that he be released, arguing that current global pandemic involving COVID-19 presents a compelling reason to grant release both because of the health risk posed by the virus as well as the impact it will have on his ability to prepare his defense. The Government opposes his request. (ECF No. 62.) Motley filed a reply brief. (ECF No. 63.) The court has reviewed the briefing, and for the reasons stated below, denies Motley's motion.

**I. BACKGROUND**

In this case, and related case 3:19-cr-00026-LRH-WGC-1, on May 23, 2019, a federal grand jury returned a pair of indictments charging Motley with conspiracy to distribute oxycodone, conspiracy to distribute methamphetamine, five counts of distribution of oxycodone, and distribution of hydrocodone. (ECF Nos. 1, 4.) Motley initially appeared in the Northern

1 District of California following his arrest, and was ordered released by a judge in Oakland,  
2 California; however, the release order was stayed for a period of time pending remand of Motley  
3 to the District of Nevada and consideration of the Government's motion for revocation of the  
4 release order by the District of Nevada.

5 District Judge Larry Hicks ordered Motley remanded to the District of Nevada on  
6 June 14, 2019. On June 20, 2019, Motley appeared before the undersigned for his initial  
7 appearance/arraignment and plea, and entered a plea of not guilty. (ECF No. 21.) Judge Hicks  
8 held a detention hearing on June 24, 2019. Judge Hicks ordered Motley detained pending trial,  
9 finding that no condition or combination of conditions of release could reasonably assure  
10 Motley's appearance at trial (*i.e.*, he was a flight risk), indicating: the weight of the evidence  
11 against Motley was strong; he would be subject to a lengthy period of incarceration if convicted;  
12 he had a prior criminal history; and, he had a lack of stable employment. (ECF No. 29.)

13 Motley is currently housed at the Washoe County Detention Facility (WCDF), operated  
14 by the Washoe County Sheriff's Office (WCSO), in Reno, Nevada. Motley seeks an order for  
15 release from custody because of the health risks posed by the current global pandemic involving  
16 COVID-19, arguing that this is a compelling reason to grant release, and that temporary release  
17 is necessary to prepare his defense.

## 18 **II. LEGAL STANDARD**

19 "A person lawfully committed to pretrial detention has not been adjudged guilty of any  
20 crime. He had only a judicial determination of probable cause as a prerequisite to [the] extended  
21 restraint of [his] liberty following arrest." *Bell v. Wolfish*, 441 U.S. 520, 536-37 (1979) (internal  
22 quotation marks and citation omitted). The government may detain someone on a federal offense  
23 to ensure his presence at trial and may subject him to the restrictions and conditions of detention

1 so long as those conditions do not constitute punishment or otherwise amount to a constitutional  
2 violation. *Id.*

3 The Bail Reform Act of 1984 mandates every person charged with a federal offense be  
4 given a detention hearing. 18 U.S.C. § 3142(a). The fundamental precept of the Bail Reform Act  
5 mandates the release of individuals so long as the court can be reasonably assured the defendant  
6 does not pose a flight risk or danger to the community. 18 U.S.C. § 3142. To the extent that  
7 conditions, or a combination of conditions, can be fashioned to reasonably provide for such  
8 assurances, the individual must be released, as detention is "the carefully limited exception." *Id.*;  
9 *see also United States v. Salerno*, 481 U.S. 739, 755 (1987). If the judge finds the defendant  
10 poses a danger to public safety or a flight risk, the defendant may be ordered detained. 18 U.S.C.  
11 § 3142(f).

12 18 U.S.C. § 3142(f)(2) permits a judicial officer to reopen a detention hearing at any time  
13 before trial if the judicial officer finds that information exists that was not known to the movant  
14 at the time of the detention hearing and *that has a material bearing on the issue of whether there*  
15 *are conditions of release that will reasonably assure the appearance of such person and the*  
16 *safety of the community.*

17 Some district courts have considered requests for release from detention due to COVID-  
18 19 concerns in the context of the section 3142(f)'s pretrial detention framework and the related  
19 subsections (§ 3142(e)(2-3), statutory rebuttable presumptions; § 3142(g), Bail Reform Act  
20 factors). *See e.g. United States v. Martin*, No. PWG-19-140-13, 2020 WL 1274857, at \*4 (D.Md.  
21 Mar. 17, 2020) (defendant raised concerns regarding his underlying medical conditions of  
22 asthma, high blood pressure and diabetes in that context); *United States v. Stephens*, ---  
23 F.Supp.3d---, 15-cr-95 (AJN), 2020 WL 1295155, at \*2 (S.D.N.Y. March 19, 2020) (court

1 considered motion to reopen detention under section 3142(f) based on a change in circumstances  
2 with respect to speculative COVID-19 concerns, and reopening detention not only based on  
3 COVID-19 concerns, but relying on new information that weakened the Government's case and  
4 undermine the prior findings relative to detention).

5 Others have analyzed a request for release due to COVID-19 concerns under  
6 18 U.S.C. § 3142(i) (citations set forth below). Section 3142(i) provides that a judicial officer  
7 may allow temporary release of a defendant if: (1) release is necessary for preparation of the  
8 defense; or (2) for another compelling reason.

9 A defendant's concerns that he faces heightened COVID-19 risk if incarcerated would not  
10 typically factor into a section 3142(f) analysis, which focuses on whether the court can fashion  
11 conditions of release that will reasonably assure the defendant is not a risk of nonappearance or a  
12 risk of harm to any others or the community. *United States v. Clark*, No. 19-40068-01-HLT,  
13 2020 WL 1446895, at \*3 (D. Kan. Mar. 25, 2020). The risk of *harm to a defendant* does not  
14 usually bear on this analysis; rather, whether a defendant's particular circumstances warrant  
15 release in light of the COVID-19 pandemic is more properly considered on a case-by-case basis  
16 under section 3142(i). *See id.*; *United States v. Hamilton*, 19-CR-54-01 (NGG), 2020 WL  
17 1323036, at \*2 (E.D.N.Y. Mar. 20, 2020).

18 In his reply brief, Motley states that he is moving for release both under 3142(f) and  
19 3142(i); however, the opening brief does not make that clear. Instead, it contains a paragraph that  
20 states generally that the COVID-19 pandemic is a changed circumstance and focuses mainly on  
21 section 3142(i). In any event, the standard under section 3142(f) is that information exists that  
22 was not previously known that *has a material bearing on the issue of whether there are*  
23 *conditions of release that will reasonably assure the appearance of such person and the safety of*

1 *the community*. As will be discussed *infra*, Motley presents generalized concerns about the risk  
2 of contracting COVID-19 at WCDF; however, Motley never cites any evidence that serves to  
3 ameliorate Judge Hicks' concerns that Motley is a flight risk so as to justify reopening detention  
4 under section 3142(f).

5 The court finds that the analysis is more appropriately conducted under section 3142(i);  
6 however, as will be discussed further below, the court's inquiry will still take into account the  
7 original grounds for pretrial detention.

8 A defendant bears the burden of establishing that circumstances warrant temporary  
9 release under §3142(i). *Clark*, 2020 WL 1446895, at \*2; *United States v. Buswell*, No. 11-CR-  
10 198-01, 2013 WL 210899, at \*5 (W.D. La. Jan. 18, 2013) (collecting cases).

11 Up until this time, most courts addressing section 3142(i) have addressed the statute in  
12 the context of evaluating the necessity of the defendant assisting with preparing his or her  
13 defense. *See e.g. United States v. Cecrle*, No. 2:12-cr-400-JAD-GWF, 2014 WL 31674, at \*4  
14 (D. Nev. Jan. 3, 2014); *Buswell*, 2013 WL 210899, at \*5; *United States v. Dupree*, 833  
15 F.Supp.2d 241, 247 (E.D.N.Y. 2011); *United States v. Jeffries*, No. 3:10-cr-100, 2011 WL  
16 182867, at \*4 (E.D. Tenn. Jan 20, 2011).

17 Until now, there was little authority previously considered whether compelling reasons  
18 exist for temporary release; however, some courts have considered whether a defendant's  
19 medical condition may present a compelling reason. *See United States v. Rebollo-Andino*, 312  
20 Fed.Appx. 346, 348 (1st Cir. 2009); *United States v. Scarpa*, 815 F.Supp. 88 (E.D.N.Y. 1993)  
21 (permitting release because of traumatic gunshot injury and terminal AIDS diagnosis that  
22 correctional authorities could no longer manage)); *United States v. Cordero Caraballo*, 185  
23 F.Supp.2d 143, 144-47 (D.P.R. 2002) (ordering release of defendant who sustained multiple gun-

1 shot wounds, was partially paralyzed, could not walk, lost some arm function, and required  
 2 supervision of 4-5 contracted security guards on a daily basis and the prison could not provide  
 3 the required medical care). Courts have typically granted relief under section 3142(i) only  
 4 "sparingly to permit a defendant's release where, for example, he is suffering from a terminal  
 5 illness or serious injuries." *Hamilton*, 2020 WL 1323036, at \*2.

6 Admittedly, courts have not previously faced the very unique set of circumstances that  
 7 presently confront the world as a result of COVID-19. In the past few weeks though, and  
 8 certainly in the weeks to come, courts around the country have addressed, and will continue to  
 9 address, requests for release under section 3142(i) in the context of the COVID-19 pandemic,  
 10 considering both the impact the pandemic has on the ability to prepare a defense as well as  
 11 whether the health risks posed by the pandemic constitute a compelling reason for temporary  
 12 release. *See e.g. United States v. Smoot*, No. 2:19-cr-20, 2020 WL 1501810 (S.D. Ohio Mar. 30,  
 13 2020); *United States v. Loveings*, Criminal No. 20-51, 2020 WL 1501859 (W.D. Penn. Mar. 30,  
 14 2020); *United States v. Bastianelli*, No. 17-305, 2020 WL 1493559 (W.D. Penn. Mar. 27, 2020)  
 15 (citing other cases in the district); *United States v. Cox*, No. 2:19-cr-00271-RFB-VCF, 2020 WL  
 16 1491180 (D. Nev. Mar. 27, 2020); *United States v. Green*, Criminal No. 19-85, 2020 WL  
 17 1493561 (W.D. Penn. Mar. 27, 2020); *United States v. Snowden*, No. 19-CR-40081-JPG, 2020  
 18 WL 1492684 (S.D. Ill. Mar. 27, 2020); *U.S.A. v. Michaels*, No. SACR 16-76-JVS, 2020 WL  
 19 1482553 (C.D. Cal. Mar. 26, 2020); *United States v. Green*, No. 8:19-cr-304-T-17SPF, 2020 WL  
 20 1477679 (M.D. Fl. Mar. 26, 2020); *United States v. Steward*, S1:20cr0052 (DLC), 2020 WL  
 21 1468005 (S.D.N.Y. Mar. 26, 2020); *Clark*, 2020 WL 1446895; *United States v. Little*, S3 20 CR  
 22 57 (GBD), 2020 WL 1439979 (S.D.N.Y. Mar. 24, 2020); *United States v. Tang*, 2:20-cr-0054-  
 23 KJD-DJA, ECF No. 44 (D. Nev. Mar. 23, 2020) (reopening detention but denying temporary



1 He cites the sharing of limited toilets, sinks and showers, restrictions on movement, and limited  
2 access to personal hygiene items as precluding detainees from taking recommended precautions.  
3 He mentions that there are significant limitations on the detention facility's medical services. He  
4 further asserts that his detention will not allow him to easily stay in contact with his family.  
5 Finally, he contends that detention during the pandemic will impact his ability to prepare for his  
6 defense.

7 Motley states that his mother, who lives in Richmond, California, has offered to act as a  
8 third-party custodian, and he is amenable to home confinement and location monitoring as  
9 conditions of supervision. He acknowledges a prior felony conviction, but indicates that his adult  
10 criminal history beyond that is not extensive and he will not pose a danger to the community if  
11 released.

12 The Government opposes Motley's request, arguing that COVID-19 is not a compelling  
13 reason for release when Motley relies only on the mere possibility of infection as a basis for  
14 seeking release. The Government points out that Motley has not demonstrated that his risk of  
15 contracting COVID-19 while detained at WCDF is significantly higher than if he were released,  
16 that he is at high risk of becoming severely ill if he contracts COVID-19, or that the facility is  
17 unequipped to provide appropriate medical treatment if he were to become ill.

18 In his reply, Motley reiterates his argument that WCDF is not adequately equipped to  
19 manage COVID-19, and that the public health crisis stemming from COVID-19 is a compelling  
20 reason for release or a changing circumstance warranting reopening of detention. Finally, Motley  
21 re-asserts his argument that release is necessary for preparation of his defense in light of  
22 COVID-19.



## 1 A. Compelling Reason

2 On March 11, 2020, the World Health Organization (WHO) officially classified COVID-  
 3 19, a disease caused by a new strain of coronavirus, as a pandemic.<sup>1</sup> According to the Centers for  
 4 Disease Control (CDC), as of the time this Order was written, there were over 186,101 (up over  
 5 20,000 from the previous day) confirmed cases in the United States of COVID-19, and 3,603  
 6 deaths (up 743 from the previous day).<sup>2</sup> The actual number of people infected is likely much  
 7 larger than that given the current capacity for testing. The rate at which COVID-19 is spreading  
 8 and affecting communities around the world is alarming.<sup>3</sup>

9 The CDC has determined that older adults (65 and older) and people of any age who have  
 10 serious underlying medical conditions are at higher risk for severe illness from COVID-19.<sup>4</sup> The  
 11 CDC states that the following conditions could make a person higher risk: people with chronic  
 12 lung disease or moderate to severe asthma; people with serious heart conditions; people who are  
 13 immunocompromised including cancer treatment; people of any age with severe obesity or  
 14 certain underlying medical conditions, particularly if not well controlled, such as those with  
 15 diabetes, renal failure, or liver disease. *Id.*

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19 <sup>1</sup> <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>, last visited March 31, 2020.

20 <sup>2</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>, last visited  
 21 April 1, 2020.

22 <sup>3</sup> See <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>, last visited April  
 1, 2020.

23 <sup>4</sup> See [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fhigh-risk-complications.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fhigh-risk-complications.html), last visited April 1, 2020.

1 Governor Steve Sisolak declared a State of Emergency in Nevada on March 12, 2020.<sup>5</sup>  
 2 Nevada's K-12 schools have been closed since March 16, 2020, and will continue to be closed  
 3 until at least April 30, 2020.<sup>6</sup> Also unprecedented is the closure of casinos in Nevada through at  
 4 least the end of April.<sup>7</sup> On March 20, 2020, Nevada's Governor issued an order closing all non-  
 5 essential businesses to the public and pleaded for individuals to stay in their homes.<sup>8</sup> On April 1,  
 6 2020, the Governor extended the order closing non-essential businesses and issued a directive for  
 7 residents of Nevada to stay at home.<sup>9</sup> As of April 1, 2020, there are 1,279 COVID-19 cases in  
 8 Nevada and 32 deaths; 143 of those cases are in Washoe County, and there have been four deaths  
 9 in Washoe County.<sup>10</sup>

10 The District of Nevada has also taken measures to protect the public, staff, and litigants  
 11 from the risks of COVID-19. *See* Temporary General Orders 2020-02, 2020-03, 2020-04, 2020-  
 12 05. There is no doubt the danger posed by this virus is real, with entire economies and some

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15 <sup>5</sup> *See* [https://knpr.org/headline/2020-03/virus-prompts-nev-governor-emergency-order-](https://knpr.org/headline/2020-03/virus-prompts-nev-governor-emergency-order-cancellations)  
 16 [cancellations](https://knpr.org/headline/2020-03/virus-prompts-nev-governor-emergency-order-cancellations), last visited April 1, 2020.

17 <sup>6</sup> *See* [https://thenevadaindependent.com/article/sisolak-announces-statewide-public-school-](https://thenevadaindependent.com/article/sisolak-announces-statewide-public-school-closures-until-april-to-reduce-coronavirus-spread)  
 18 [closures-until-april-to-reduce-coronavirus-spread](https://thenevadaindependent.com/article/sisolak-announces-statewide-public-school-closures-until-april-to-reduce-coronavirus-spread), last visited March 31, 2020;  
[https://thenevadaindependent.com/article/sisolak-extends-covid-19-shutdown-until-end-of-april-](https://thenevadaindependent.com/article/sisolak-extends-covid-19-shutdown-until-end-of-april-urges-residents-to-shelter-in-place)  
[urges-residents-to-shelter-in-place](https://thenevadaindependent.com/article/sisolak-extends-covid-19-shutdown-until-end-of-april-urges-residents-to-shelter-in-place), last visited April 1, 2020.

19 <sup>7</sup> *See* [https://www.reviewjournal.com/business/casinos-gaming/nevada-casinos-closing-for-30-](https://www.reviewjournal.com/business/casinos-gaming/nevada-casinos-closing-for-30-days-following-state-order-1984236/)  
 20 [days-following-state-order-1984236/](https://www.reviewjournal.com/business/casinos-gaming/nevada-casinos-closing-for-30-days-following-state-order-1984236/), last visited March 31, 2020;  
[https://thenevadaindependent.com/article/sisolak-extends-covid-19-shutdown-until-end-of-april-](https://thenevadaindependent.com/article/sisolak-extends-covid-19-shutdown-until-end-of-april-urges-residents-to-shelter-in-place)  
[urges-residents-to-shelter-in-place](https://thenevadaindependent.com/article/sisolak-extends-covid-19-shutdown-until-end-of-april-urges-residents-to-shelter-in-place), last visited April 1, 2020.

21 <sup>8</sup> *See* [https://www.rgj.com/story/news/politics/2020/03/20/nevada-governor-orders-most-](https://www.rgj.com/story/news/politics/2020/03/20/nevada-governor-orders-most-businesses-closed-midnight/2888908001)  
[businesses-closed-midnight/2888908001](https://www.rgj.com/story/news/politics/2020/03/20/nevada-governor-orders-most-businesses-closed-midnight/2888908001), last visited April 1, 2020.

22 <sup>9</sup> *See* [https://thenevadaindependent.com/article/sisolak-extends-covid-19-shutdown-until-end-of-](https://thenevadaindependent.com/article/sisolak-extends-covid-19-shutdown-until-end-of-april-urges-residents-to-shelter-in-place)  
[april-urges-residents-to-shelter-in-place](https://thenevadaindependent.com/article/sisolak-extends-covid-19-shutdown-until-end-of-april-urges-residents-to-shelter-in-place), last visited April 1, 2020.

23 <sup>10</sup> *See* <https://www.ktvn.com/story/41917304/coronavirus-cases-across-nevada>, last visited April  
 1, 2020.

1 healthcare systems around the world collapsing or on the verge of collapsing as the world  
2 attempts to contain the spread of the virus.

3       The court is mindful of the unprecedented magnitude of the COVID-19 epidemic and the  
4 extremely serious health risks it presents, particularly within the jail and prison setting. The CDC  
5 notes that "[c]orrectional and detention facilities can include custody, housing, education,  
6 recreation, healthcare, food service, and workplace components in a single physical setting. The  
7 integration of these components presents unique challenges for control of COVID-19  
8 transmission among incarcerated/detained persons, staff, and visitors."<sup>11</sup> The CDC cautions that  
9 "once community transmission is identified in a particular area," as it has been in Washoe  
10 County, "correctional facilities and detention centers are more likely to start seeing cases inside  
11 their walls." *Id.* The CDC has given interim guidance for steps that correctional and detention  
12 facilities should take for preparation, prevention and management to help reduce the risk of  
13 transmission and severe illness from COVID-19. *Id.* The CDC recommends that these facilities  
14 take the following steps in this regard: operational and communications preparations for COVID-  
15 19; enhanced cleaning/disinfecting and hygiene practices; social distancing strategies to increase  
16 space between individuals in the facility; limiting transmission from visitors; infection control,  
17 including recommended personal protective equipment and alternatives if there are shortages;  
18 screening protocols for incoming incarcerated/detained individuals, staff and visitors; medical  
19 isolation for confirmed and suspected cases and quarantine of contacts; healthcare evaluation for  
20 suspected cases, including testing for COVID-19; clinical care for confirmed and suspected  
21 cases; and considerations for persons at higher risk of severe disease. *Id.*

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<sup>11</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>, last visited April 1, 2020.

1 Nevertheless, in this context, a defendant should not be entitled to temporary release  
2 under section 3142(i) based solely on generalized COVID-19 fears and speculation. *Clark*, 2020  
3 WL 1446895, at \*3. Instead, as noted above, the court must make an individualized  
4 determination as to whether the COVID-19 health concerns present such a compelling reason in  
5 a particular case that temporary release is warranted or that the conditions related to detention as  
6 a result of COVID-19 make temporary release necessary for preparation of the defense.

### 7 **1. The Original Grounds for Pretrial Detention**

8 The court will consider the original grounds for the defendant's pretrial detention. *Clark*,  
9 2020 WL 1466895, at \*3; *Hamilton*, 2020 WL 1323036, at \*1-2 (first considering the rebuttable  
10 presumption under section 3142(e) before considering whether the COVID-19 pandemic  
11 warranted temporary release under section 3142(i)); *Bararia*, 2013 WL 1907782, at \*1-2  
12 (considering circumstances leading to the defendant's revocation of pretrial release); *Buswell*,  
13 2013 WL 210899, at \*5 (observing that "the facts surrounding the underlying reasons for the  
14 defendant's detention are relevant to the [section 3142(i)] analysis.").

15 For a defendant seeking temporary release under section 3142(i), it has already been  
16 determined by a court that pretrial detention was warranted on the grounds that no condition or  
17 combination of conditions would reasonably assure the defendant is not a flight risk and/or  
18 would not pose a risk of harm to others. *Clark*, 2020 WL at 1446895, at \*3. Therefore, the court  
19 takes into consideration whether the defendant has presented such compelling reasons that  
20 effectively override or at least sufficiently counterbalance the findings that originally justified the  
21 pretrial detention order. *Id.*

22 Here, Judge Hicks found that Motley was a flight risk and that no conditions or  
23 combination of conditions could reasonably assure his appearance for trial. While Motley claims

1 he is amenable to home confinement and location monitoring, he does not present any evidence  
2 to override or counterbalance Judge Hicks' original determination that conditions, including the  
3 conditions he presently proposes, would not reasonably assure his appearance at trial. In  
4 particular, the concerns persist regarding the fact that Motley was less than candid about some  
5 areas of his past. For example, he reported that he had lived with his mother prior to his arrest,  
6 but it took months to locate him to be arrested, and it was indicated that he only lived at his  
7 mother's residence twice a month and otherwise lived a transient lifestyle.

8 Moreover, while Motley proposes that he will submit to location monitoring, he does not  
9 take into account the feasibility of location monitoring by Pretrial Services under the  
10 circumstances presented by COVID-19. As will be discussed below, he also does not appreciate  
11 the risk that location monitoring might pose to Pretrial Services personnel under these  
12 circumstances.

13 In sum, Motley has not presented any evidence to alleviate the court's concerns that he  
14 remains a flight risk and that there are no conditions that could be fashioned to reasonably assure  
15 his appearance at trial. Therefore, this factor weighs against temporary release.

## 16 **2. Defendant's Specific COVID-19 concerns**

17 The court now turns to Motley's stated COVID-19 concerns. Motley raises only  
18 generalized concerns regarding the impact COVID-19 may have on him if he is detained during  
19 this pandemic. He asserts generalizations regarding prisons and detention facilities being at  
20 higher risk for an outbreak, and presents a conclusory assertion that the WCDF and WCSO and  
21 are not adequately prepared to prevent an outbreak, and that they are further unprepared to  
22 manage an outbreak once the virus enters the facility. Motley also contends that he is a greater  
23 risk of contracting COVID-19 given the lack of opportunity for social distancing at WCDF.

1 Preliminarily, Motley admits that he is unaware of known cases of COVID-19 at WCDF.  
2 Additionally, Motley presents no evidence that he is at higher risk for severe illness from  
3 COVID-19. He is under the 65 year age range the CDC has indicated for high risk, and does not  
4 provide evidence that he has any serious underlying medical condition that puts him at risk.

5 Next, it is undisputed that the CDC has recommended social distancing in order to  
6 "flatten the curve" and slow transmission of the virus.<sup>12</sup> On March 29, 2020, President Trump  
7 extended social distancing guidelines that recommend avoiding social gatherings of ten or more  
8 people through at least the end of April, and perhaps longer.<sup>13</sup> The Governor of Nevada has also  
9 restricted Nevadans who are not living within the same household, working at or patronizing an  
10 essential business, or providing essential services, from gathering in groups of ten or more in any  
11 indoor or outdoor public area, and as noted above, on April 1, 2020, issued a directive for  
12 Nevadans to stay at home.<sup>14</sup>

13 WCDF is reportedly taking reasonable recommended precautions, including having  
14 medical staff screen inmates during intake for COVID-19 risk, isolating those that are deemed to  
15 be high risk, and promoting other recommended disinfecting and hygiene habits. WCDF is  
16 implementing CDC and World Health Organization guidelines, purchasing COVID-19 test kits  
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18 <sup>12</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/get-ready.html>, last visited,  
19 April 1, 2020 (setting forth steps to reduce transmission); The President's Coronavirus  
20 Guidelines for America, [https://www.whitehouse.gov/wp-](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf)  
21 [content/uploads/2020/03/03.16.20\\_coronavirus-guidance\\_8.5x11\\_315PM.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf), last visited April  
22 1, 2020.

23 <sup>13</sup> See [nytimes.com/2020/03/29/us/politics/trump-coronavirus-guidelines.html](https://nytimes.com/2020/03/29/us/politics/trump-coronavirus-guidelines.html), last visited April  
1, 2020.

<sup>14</sup> See [https://nvhealthresponse.nv.gov/wp-content/uploads/2020/03/03.24-PUBLIC-](https://nvhealthresponse.nv.gov/wp-content/uploads/2020/03/03.24-PUBLIC-GATHERING-DIRECTIVE_.pdf)  
GATHERING-DIRECTIVE\_.pdf, last visited April 1, 2020; see  
[https://thenevadaindependent.com/article/sisolak-extends-covid-19-shutdown-until-end-of-april-](https://thenevadaindependent.com/article/sisolak-extends-covid-19-shutdown-until-end-of-april-urges-residents-to-shelter-in-place)  
urges-residents-to-shelter-in-place, last visited April 1, 2020.

1 to the extent they are available, communicating best practices for hygiene to prevent the spread,  
2 encouraging employees to stay home if they are ill, and developing plans to separate high risk  
3 individuals who are more susceptible to COVID-19. Further, in the event an inmate becomes too  
4 ill to be cared for within the detention center, the inmate will be transported to a local medical  
5 facility for treatment. WCDF also changed visitation policies to suspend all in person visits,  
6 which will now be conducted remotely. In order to allow WCDF inmates access to families  
7 during the pandemic, the WCSO has set up "virtual visitations" through the internet and provides  
8 free phone calls for all inmates.<sup>15</sup>

9 While it is true that infected persons may now show symptoms until between two and  
10 fourteen days from exposure<sup>16</sup>, and suspected that some percentage of infected persons may not  
11 show symptoms at all or very mild symptoms<sup>17</sup>, that is also the case outside of WCDF. As for  
12 the argument that COVID-19 testing is not available for WCDF inmates, this is an ongoing  
13 problem that is not unique to prison and jail systems. This problem exists locally as well as  
14 statewide and nationwide.<sup>18</sup>

15 In his reply brief, Motley points to Magistrate Judge Weksler's order in *United States v.*  
16 *Cox*, 2:19-cr-00271-RFB-VCF, stating that "[g]iven the medical obstacles identified by major  
17 cities, it is doubtful that Southern Nevada Detention Center and the hospital at Pahrump will fare

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18 <sup>15</sup> See <https://www.washoesherriff.com/resources/files/COVID-19%20Backup%203-26-2020.pdf>,  
19 last visited April 1, 2020; *see also* ECF No. 59-1.

20 <sup>16</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>, last  
visited March 31, 2020.

21 <sup>17</sup> See [https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-](https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html)  
transmission.html, last visited April 1, 2020.

22 <sup>18</sup> See [https://www.cnn.com/2020/03/28/politics/coronavirus-swabs-supplies-shortage-](https://www.cnn.com/2020/03/28/politics/coronavirus-swabs-supplies-shortage-states/index.html)  
states/index.html, last visited April 1, 2020;  
23 [https://www.rgj.com/story/news/2020/03/30/coronavirus-testing-las-vegas-washoe-county-](https://www.rgj.com/story/news/2020/03/30/coronavirus-testing-las-vegas-washoe-county-health-department-nsphl/2932083001/)  
health-department-nsphl/2932083001/, last visited April 1, 2020.

1 better than hospitals in New York or California." (ECF No. 141 at 2, n.2.) The undersigned  
2 likewise acknowledges the great difficulties that our local hospitals and medical centers in  
3 detention and correctional facilities are encountering and will continue to encounter during the  
4 course of this pandemic, but again, those difficulties are being faced by hospitals and  
5 correctional/detention centers around the world. The strain on healthcare resources will certainly  
6 be no different and may even be worse if Motley is released to Richmond, California, where  
7 COVID-19 is presently more widespread than in Washoe County. Moreover, Judge Weksler  
8 nevertheless denied Cox's motion seeking release.

9 In sum, Motley has not presented a specific COVID-19 risk. His arguments are too  
10 speculative or generalized to favor release. Motley cannot predict the extent to which COVID-19  
11 cases might arise at WCDF any more than many Americans can predict how they might be  
12 exposed to the virus. Nor can Motley predict how WCSO might respond to an outbreak any more  
13 accurately than many Americans can predict how their local hospitals might respond, or might be  
14 able to respond. While inmates may not be able to fully adhere to optimal social distancing  
15 guidelines, these circumstances are generalized to all individuals in the prison system and are not  
16 unique to Motley. At this point, the court concludes that Motley is at a facility that has  
17 implemented meaningful measures to try to minimize the likelihood of the virus entering the  
18 facility. Therefore, this factor weighs against release.

19 **3. The Extent to Which the Proposed Release Plan is Tailored to Mitigate or**  
20 **Exacerbate the Defendant's Overall Covid-19 Risk**

21 The Bail Reform Act allows for temporary release only if the court determines such  
22 release is "necessary" for a compelling reason. 18 U.S.C. § 3142(i). In the context of COVID-19,  
23 this means the proposed temporary release plan should be tailored to mitigate the defendant's



1 overall COVID-19 risks, not exacerbate them. *Clark*, 2020 WL 1446895, at \*6. Thus, the court  
2 evaluates the extent to which the defendant's proposed release plan is tailored to mitigate or  
3 exacerbate the defendant's overall COVID-19 risks. *Id.*

4 Here, Motley's proposed release plan includes home confinement with location  
5 monitoring at the residence of his mother in Richmond, California. The plan does not address all  
6 aspects of public health officials' recommendations and does not address other risk factors that  
7 would arise if he were released from custody. There is currently no evidence that if someone at  
8 WCDF were to contract COVID-19 that WCSO is unprepared to contain the virus and care for  
9 those who may become infected. Instead, WCSO has established a comprehensive plan to  
10 manage WCDF during the pandemic. The record is devoid of specific information suggesting  
11 that WCDF would be unable to render appropriate medical care to Motley if he became ill.  
12 Therefore, the speculative allegations regarding WCDF's inability to manage care of inmates  
13 during the pandemic do not justify temporary release.

14 Motley also does not address the extent to which his risks could be exacerbated if he is  
15 released to his mother's home. There is no evidence as to how the proposed living situation  
16 mitigates the risk of infection. For example, Motley does not explain who else has or will live in  
17 or frequent the home or identify any screening practice or concrete COVID-19 precautions taken  
18 there. Motley offers nothing more than speculation that home detention would be less risky than  
19 living at WCDF, which at least has screening practices and other reasonable COVID-19  
20 measures in place.

21 Further, Motley does not address the capacity of the health care system where he  
22 proposes to reside and its capacity to provide him with adequate treatment if he were to contract  
23 the virus. On March 4, 2020, California Governor Gavin Newsom proclaimed a state of

1 emergency in California as a result of the threat of COVID-19.<sup>19</sup> On March 19, 2020, Governor  
 2 Newsom ordered all residents of California to stay at home. *Id.* In Richmond, California, where  
 3 Motley seeks to be released, the Contra Costa Health Services issued an updated order that  
 4 current shelter in place requirements will be extended at least through May 3, 2020.<sup>20</sup> As of the  
 5 April 1, 2020, California had 9,599 confirmed COVID-19 cases (and 206 deaths), behind only  
 6 New York and New Jersey.<sup>21</sup> As of the same date, the number of patient's in California's ICUs  
 7 has tripled, while the number of patients the state's hospitals has doubled.<sup>22</sup> In Contra Costa  
 8 County, where Richmond is located, a local high school is slated to become a temporary  
 9 hospital.<sup>23</sup> These facts do not reassure the court that Motley would be in any better position vis-  
 10 à-vis COVID-19 if he were released to his mother's home in Richmond, California. Currently,  
 11 there are many more confirmed cases of COVID-19 in California, and the Bay Area, where  
 12 Motley proposes to be released, as compared to Washoe County in general. Again, there are no  
 13 confirmed inmate cases at WCDF at this point.

14 In contrast, if Motley remains at WCDF, he has access to medical care should he become  
 15 ill. WCSO collaborates with county and state health agencies, the CDC, and others to keep its  
 16 employees and inmates safe. Motley has not demonstrated that his proposed release plan would  
 17 necessarily better address his health concerns than if he were to remain in custody.

19 <sup>19</sup> See <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>, last visited April 1, 2020.

20 <sup>20</sup> See <http://www.ci.richmond.ca.us/3916/Shelter-in-Place>, last visited April 1, 2020.

21 <sup>21</sup> See <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>, last visited April 1, 2020.

22 <sup>22</sup> See <https://www.mercurynews.com/2020/03/31/coronavirus-californias-patients-in-icus-triples-hospitalizations-double/>, last visited April 1, 2020.

23 <sup>23</sup> See <https://www.nbcbayarea.com/news/coronavirus/east-bay-high-school-to-become-temporary-hospital-during-covid-19-crisis/2262557/>, last visited April 1, 2020.

1 On balance, this factor appears to weigh against temporary release.

2 **4. The Likelihood that Defendant's Proposed Release Plan Would Increase COVID-**  
3 **19 Risks to Others**

4 In considering temporary release under section 3142(i) based on circumstances related to  
5 COVID-19, it is also appropriate to consider the likelihood the defendant's proposed release plan  
6 would increase COVID-19 risks to others, particularly if the defendant is likely to violate the  
7 conditions of release. *Clark*, 2020 WL 1446895, at \*7.

8 A defendant who is unable to comply with conditions of release poses potential risks to  
9 law enforcement officers who are already tasked with enforcing shelter-in-place orders in many  
10 cities and counties and expend precious resources during this pandemic to return him to custody.

11 Supervising offenders in the community would actually place pretrial services officers at  
12 heightened risk of contracting the virus. "[L]ocation monitoring is not a limitless resource, nor is  
13 its installation and monitoring by the United States Pretrial Services officers without risk to those  
14 personnel (who must be trained and certified to install location monitoring) given the current  
15 recommendations regarding implementation of social distancing." *Martin*, 2020 WL 1274857, at  
16 \*4.

17 Finally, Motley proposes being released to home confinement with his mother. Prior  
18 filings indicate that Motley's mother is 86 years old. Temporary release to live with his 86 year  
19 old mother would go against current guidance recommending limiting in person contact with  
20 elderly family members in places where there has been community transmission.<sup>24</sup>

21 Therefore, this factor weighs against temporary release.

22  
23 <sup>24</sup> See <https://www.aarp.org/health/conditions-treatments/info-2020/cdc-covid-19.html>, last  
visited April 1, 2020.

1 In conclusion, Motley has not met his burden of demonstrating that the health risks posed  
2 by COVID-19 are a compelling reason justifying temporary release.

3 **B. Necessary for Preparation of the Defense**

4 Motley also argues that temporary release is necessary for the preparation of his defense.  
5 His attorney states that is unwise to visit a client at WCDF during the COVID-19 pandemic  
6 because counsel may unknowingly expose Motley to COVID-19. In addition, he asserts that  
7 there are limited means for contacting Motley at the jail.

8 The Government argues that Motley has not shown that in person visits are necessary to  
9 prepare his defense, and that release would not necessarily improve his access to his attorney.

10 Courts considering whether pretrial release is necessary for preparation of defense have  
11 analyzed: (1) the time and opportunity the defendant has to prepare for the trial and participate in  
12 his defense; (2) the complexity of the case and volume of information; and (3) expense and  
13 inconvenience associated with preparing for trial while incarcerated. *Cecrle*, 2014 WL 31674, at  
14 \*4. These typical considerations, however, are not necessarily relevant to the claims made by  
15 defendants seeking release due to COVID-19 concerns.

16 WCDF has limited in-person visitation at the jail, and has provided for teleconferencing  
17 and telephone communication with legal representatives and visitors during the COVID-19  
18 pandemic. Motley will still have access to his attorney while detained during the pandemic  
19 through these means. Even outside the jail, while law firms are deemed essential businesses in  
20 Nevada and can still operate, they are supposed to follow social distancing guidelines; therefore,  
21 attorneys and their clients outside of the jail/prison setting are also utilizing telephone and  
22 videoconferencing modes of communication.

1 Motley does not present a declaration from counsel indicating how often he visited his  
2 counsel in person at WCDF before the pandemic, or stating why counsel cannot adequately  
3 prepare for trial utilizing telephonic and videoconferencing methods of communication. Nor does  
4 Motley's briefing address the fact that if Motley were released to confinement in his mother's  
5 home in Richmond, California, it is unlikely that counsel would travel to California to meet with  
6 him in person (particularly in light of the more widespread prevalence of COVID-19 in  
7 California, guidance to avoid non-essential travel, social distancing, and shelter-in-place and stay  
8 at home restrictions in California and Nevada). Instead, the current restrictions and guidance  
9 suggest that telephonic or videoconferencing would be the preferred mode of communication  
10 under the circumstances. Motley has a right to unmonitored calls or videoconferencing with his  
11 counsel from WCDF.

12 Even if it were otherwise feasible for Motley's counsel to visit Motley in person in  
13 California, Motley does not explain how the risk to his 86-year old mother would be ameliorated.  
14 Just as Motley asserts that his counsel might unknowingly expose Motley to the virus if permitted  
15 to visit Motley at WCDF, counsel could similarly unknowingly expose Motley and his 86-year-  
16 old mother if Motley was visited in person in California.

17 In addition, if Motley were released, he may not have access to *any* videoconferencing  
18 capabilities. Therefore, his ability to communicate with counsel during the COVID-19 pandemic  
19 may be greater while he is housed at WCDF.

20 The court does not find that Motley's temporary release is necessary for the preparation  
21 of his defense. The court is sympathetic to the circumstances surrounding Motley's ability to  
22 communicate with counsel during the COVID-19 pandemic while housed at WCDF; however, to  
23

1 the extent these limitations exist while Motley is detained, they will also exist to a large degree if  
2 he is released.

3 Therefore, this factor also weighs against temporary release.

4 In sum, considering all of the facts before it at this time, the court does not find that  
5 Motley's temporary release is necessary to prepare his defense.

6 **IV. CONCLUSION**

7 On balance, Motley has not set forth information to override or counterbalance the  
8 concerns identified by Judge Hicks in making the decision to detain Motley pending trial. Nor  
9 has Motley met his burden of demonstrating a compelling reason that would justify temporary  
10 release, or that the circumstances necessitate temporary release for preparation of his defense.

11 Therefore, Motley's emergency motion to reopen detention (ECF No. 59) is **DENIED**.

12 **IT IS SO ORDERED.**

13 Dated: April 2, 2020

14 

15 William G. Cobb  
16 United States Magistrate Judge  
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